No. 87-353

Supreme Court, U.S.
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In The Supreme Court Of The United States

October Term, 1987

REATHER P. ARNOLD,

Petitioner,

v.

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

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QUESTION PRESENTED

Is it a violation of the constitutional obligation to pay "just compensation," to hold that the value of property taken in condemnation cannot be valued in combination with adjoining lands without unity of ownership?

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PETITION FOR WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

Reather P. Arnold, Petitioner, prays that a Writ of Certiorari issue to review the decision of the South Carolina Supreme Court, filed April 27, 1987, in this proceeding.

OPINION BELOW

The opinion of the South Carolina Supreme Court initially reported at 356 S.E.2d 837 (1987) appears in Appendix A hereto.

A timely petition for rehearing was filed in the Supreme Court and was denied without modification of the opinion. (Appendix B)

JURISDICTION

The order of the South Carolina Supreme Court denying rehearing of the Supreme Court decision was filed on June 2, 1987. This petition for a writ of certiorari is filed within ninety days of that date. This court's jurisdiction is invoked under Title 28 U.S.C. Section 1257(3).

STATEMENT OF THE CASE

This is a condemnation case

instituted by the South Carolina Public Service Authority for the purpose of establishing an electric transmission line easement across the landowner's property.

The property is one of six (6) tracts of land that have been owned by members of the same family and used as a unit, that were consolidated for an earlier trial regarding the same condemnation. The South Carolina Supreme Court reversed this prior judgment on procedural grounds concerning consolidation and sent the cases back for separate trials at S.C. Public Service Authority v. Reather P. Arnold, et al, 287 S.C. 581, 340 S.E.2d 535 (1985).

The instant case was the first case, of the six remanded for trial, and was tried on April 7, 1986. Prior to and at trial, the trial court ruled that

testimony or evidence with respect to combining the several tracts for determining highest and best use, specifically to make it economically feasible to establish a limestone mining quarry, was not admissible.

Notice of intent to appeal was timely taken, with reference to the trial Court's ruling and from the jury verdict. That appeal was decided by the South Carolina Supreme Court on April 27, 1987 (Appendix A). On May 6, 1987 Petitioner filed a Petition for Rehearing in the South Carolina Supreme Court. The South Carolina Supreme Court denied the Petition of Rehearing filed June 2, 1987 (Appendix B).

STATEMENT OF THE FACTS

The South Carolina Public Service Authority instituted a condemnation action for purpose of

establishing an electric transmission line easement across tracts of land owned by six brothers and sisters in Berkeley County, South Carolina. The six tracts have been owned by them since 1948 and were previously owned as one tract by their father. The father allocated the lands to his children prior to his death. The Petitioner, Reather P. Arnold, owns one of these tracts.

Since they have owned the lands, the landowners have used the separate tracts as a unit and have sold their timber as a unit for the past thirty or more years. In 1951, the landowners found that underlying their lands was a deposit of limestone and since 1971 have planned to sell the lands together as a quarry site when they were able to obtain a reasonable and profitable price for such an opera-

tion. The first trial court, prior to remand for separate trials, found that there was such a reasonable probability of a combination of the lands for the use as a limestone quarry as to allow the consideration of the lands as having limestone deposits in combination with other tracts. The first trial Court also found that before the take a limestone quarry would have been an economically feasible operation on the six (6) tracts. It is undisputed that such an operation would not be economically feasible on Petitioner's tract alone.

The South Carolina Supreme Court reversed the prior trial court's ruling, based upon a procedural ruling concerning consolidation and remanded all six cases to be tried separately. Petitioner's case was the first to be heard and she was denied the right to

introduce any evidence concerning combining the six tracts for determining their highest and best use.

REASON FOR GRANTING THE WRIT

TO HOLD THE VALUE OF PROPERTY TAKEN IN CONDEMNATION CANNOT BE VALUED IN COMBINATION WITH ADJOINING LANDS WITHOUT UNITY OF OWNERSHIP, NECESSARILY VIOLATES THE CONSTITUTIONAL OBLIGATION TO PAY "JUST COMPENSATION."

The Fifth Amendment mandates that when private property is taken for public use that the owner of the condemned property receive "just compensation." In order for Petitioner to receive "just compensation," she must be paid upon the highest and most profitable use for which the property is reasonably adaptable. E.g., U.S. v. 531.10, Acres in Anderson County, S.C., 243 F.Supp. 981 (1965).

At trial, Petitioner was denied the right to introduce evidence of the value of her tract if used as a limestone quarry in common with the five adjoining parcels owned by her brothers and sisters. It is undisputed that Petitioner's tract alone could not be used to extract limestone and that the Respondents powerline easement crosses all six parcels. It is also undisputed that before the take, a limestone quarry would have been an economically feasible operation on the six (6) tracts combined.

The question before the court today is a question of "just compensation" as required by the 5th Amendment to the Constitution of the United States.

The recent decision of this Court of English Evangelical Lutheran

Church of Glendale v. Los Angeles County, ___ U.S. ___, 107 S.Ct. 2378 (1987), explained the "just compensation" requirement as follows:

> Consideration of the compensation question must begin with direct reference to the language of the Fifth Amendment, which provides in relevant part that 'private property [shall not] be taken for public use, without just compensation.' Id. at ____, 107 S.Ct. at 2385...The basic understanding of the Amendment makes clear that it is designed not to limit the governmental inter-ference with property rights per se, but rather to secure compensation in the event of otherwise proper interference amounting to a taking. Thus, government action that works a taking of property rights necessarily implicates the 'constitutional obligation to pay just compensation.' Id. at ___, 107 S. Ct. at 2385-86. (quoting Armstrong v. U.S., 364 U.S. 40, 49, 80 S.Ct. 1563, 1569, 4 L.Ed.2d 1554 (1960)).

The Supreme Court of South Carolina failed to recognize the guiding principle in determining "just compensation" as set forth by this Court in Olson v. United States, 292 U.S. 246, 54 S.Ct. 704, 78 L. Ed. 1236 (1934):

> Just compensation includes all elements of value that inhere in the property, but it does not exceed market value fairly determined. The sum required to be paid the owner does not depend upon the uses to which he has devoted his land but is to be arrived at upon just consideration of all the uses for which it is suitable. The highest and most profitable use of which the property is adaptable and needed or likely to be needed in the reasonably near future is to be considered, not necessarily as the measure of value, but to the full extent that the prospect of demand for such use affects the market value while the property is privately held. Boom Co. v. Peterson, 98 U.S. 403, 408. Clark's Ferry Bridge Co. v. Public Service Comm.'s, 291 U.S. 227, 2 Lewis, Eminent Domain 3d

> ed. §707, p. 1233. 1 Nichols, Eminent Domain, 2d ed., §220, p. 671. The fact that the most profitable use of a parcel can be made only in combination with other lands does not necessarily exclude that use from consideration if the possibility of combination is reasonably sufficient to affect market value. (Emphasis added).

Id. at 255-56, 54 S.Ct. at 708-09. See also, U.S. v. Fuller, 409 U.S. 488, 93 S.Ct. 801 (1973).

The Supreme Court of South Carolina, before the instant case, applied the reasoning of the Court in Olson in deciding City of Orangeburg v. Buford, 227 S.C. 280, 87 S.E.2d 822 (1955) which stated:

> The landowner was entitled to compensation upon the basis of most advantageous and profitable use of her land. In estimating the value of property condemned, all of the uses to which it may be applied, or for which it is adapted, which affect its value in the market, are

> to be considered, and not merely the condition it is in at the time and the use to which it was then applied by the owner. Nathahala Power & Light Co. v. Moss, 220 N.C. 200, 17 S.E.2d 10; 18 Am Jur., Eminent Domain, Section 244. It is true that the improvements on the property condemned were to be made in conjunction with those on adjacent property but 'the fact that the most profitable use of a parcel can be made only in combination with other lands does not necessarily exclude that use from consideration if the possibility of combination is reasonably sufficient to affect market value.' Olson v. United States, 292 U.S. 246, 54 S. Ct. 704, 709 78 L.Ed. 1236. (Emphasis added).

Id. at 285, 87 S.E.2d at 825.

The Supreme Court of South Carolina, in affirming the trial court's decision in this case, relied on Lewis v. South Carolina State Highway Dept., 278 S.C. 170, 293 S.E.2d 434 (1982) and South Carolina Highway Dept. v. Terrain,

276 S.C. 186, 227 S.E.2d 184 (1976) which held that different parcels may be combined to determine severance damages after a taking only if the parcels are united in ownership, physical proximity and use. The Court then ruled that no unity of ownership existed, and therefore the adjoining parcels of land could not be taken into consideration for the purpose of determining compensation. Simply stated, before a particular piece of land can qualify for severance damages (dollars), its relation to the land taken must be such as to meet the united in ownership, physical proximity, and use test. In this case, the Supreme Court of South Carolina confused the issue of valuing land in conjunction with other land to determine each parcel's highest and best use with the issue of what constitutes a tract for

purposes of determining to which land severance damages apply. The court failed to recognize that the application of unity of ownership only applies when there is an attempt to apply severance damages to more than one tract of land. Under the Constitutional requirement of "just compensation," unity of ownership can not apply to the valuation of the land taken. In the case of the land taken, in order for the landowner to receive "just compensation," as required by the Fifth Amendment, he must be compensated upon the basis of the most advantageous and profitable use of his land, to include valuation in combination with other lands.

CONCLUSION

The South Carolina Supreme Court decision affirming the trial judge's disallowance of evidence as to

the value of the condemned tract if used in combination with adjoining tracts, had the effect of overruling its own prior decision and is in variance with the decisions of this Court. This evidentiary ruling denies Petitioner the right to "just compensation" for her land.

For all of the above reasons, the Petition for Writ of Certiorari should be granted.

A. Camden Lewis
Keith M. Babcock
LEWIS, BABCOCK, PLEICONES
& HAWKINS

R. Markeley Dennis, Sr.
Dennis & Dennis

Attorneys for Petitioner

(Appendices follow)

FILING AND MAILING CERTIFICATE

I, Barbara E. Grove, hereby certify that on this 28th day of August, 1987, I filed with the Clerk's Office of the Supreme Court of the United States the foregoing Petition for a Writ of Certiorari and further certify that I mailed this same date the required copies to the opposing counsel listed below:

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APPENDIX A

Reather P. Arnold,

Appellant,

v.

South Carolina Public Service Authority,

Respondent.

No. 22711.

Supreme Court of South Carolina.

Heard March 24, 1987.

Decided April 27, 1987.

Public Service Authority brought condemnation action to establish power line easement over tract of land. The Court of Common Pleas, Berkeley County, Frank P. McGowan, Jr., J., disallowed evidence of value of condemnee's tract if used as limestone quarry in common with adjoining parcels owned by her brothers and sisters, and condemnee appealed. The Supreme Court, Gregory, J., held that adjoining parcels

could not be combined for purpose of increasing compensation for land taken, as parcels lack unity of ownership.

Affirmed.

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Adjoining parcels owned by condemnee and her brothers and sisters could not be combined for purpose of increasing compensation for land taken in condemnation proceedings, as parcels lacked unity of ownership.

A. Camden Lewis, of Lewis, Babcock, Pleicones & Hawkins, Columbia, for appellant.

E. McLeod Singletary, Celeste T. Jones, McNair, Glenn, Konduros, Corley, Singletary, Porter & Dibble, P.A., Columbia, Charles L. Terry, III, and Donald M. Holler, Moncks Corner, for respondent.

GREGORY, Justice:

This is a condemnation action by respondent South Carolina Public Service Authority to establish a powerline easement over a tract of land owned by appellant Arnold. We affirm.

At trial Arnold sought to introduce evidence of the value of her tract if used as a limestone quarry in common with the five adjoining parcels owned by her brothers and sisters. She claimed this value should be used as the appropriate measure of compensation for the taking of her property. It is undisputed that Arnold's tract alone could not be used to extract limestone and that at the time of trial the tracts were used separately as farm or timberland. The powerline easement crosses all six parcels.

The issue presented is whether

parcels of adjoining land held by different landowners may be combined to assess the value of one landowner's property taken in a condemnation action. This Court has held that different parcels may be combined to determine severance damages after a taking only if the parcels are united in ownership, physical proximity, and use. Lewis v. South Carolina State Highway Dep't., 278 S.C. 170, 293 S.E.2d 434 (1982); South Carolina State Highway Dep't. v. Terrain, 267 S.C. 186, 227 S.E.2d 184 (1976). This same rule applies in determining the value of the property taken. Because the adjoining parcels here lack unity of ownership, they may not be combined for the purpose of increasing compensation for the land taken. See also Board of Transportation v. Martin, 296 N.C. 20, 249 S.E.2d 390

(1978); Barnes v. North Carolina State Highway Comm'n, 250 N.C. 378, 109 S.E.2d 219 (1959); 29A C.J.S. Eminent Domain §140 (1965). The trial judge properly disallowed the proffered evidence.

Accordingly, the judgment of the Circuit Court is

AFFIRMED.

NESS, C.J., HARWELL, and FINNEY, J.J., and Acting Associate Justice ALEXANDER M. SANDERS, JR., concur.

APPENDIX B

The Supreme Court of South Carolina

June 2, 1987

A. Camden Lewis, Esquire
Post Office Box 11208
Columbia, South Carolina 29211

Re: Arnold v. S.C. Public Service Authority

Dear Mr. Lewis:

The Court has refused your Petition for Rehearing in the above entitled matter in the following order:

"Petition denied.

s/ J.B. Ness C.J.
s/ George T. Gregory, Jr. A.J.
s/ David W. Harwell A.J.
s/ Ernest A. Finney, Jr. A.J.
s/ Alexander M. Sander, Jr. A.A.J.

Associate Justice Chandler not participating.

June 2, 1977."

The remitter is being forwarded to the Clerk of Court fo Berkeley County.

Sincerely yours,
Clyde N. Davis
CLERK

CND,Jr/krp

cc: Celeste T. Jones, Esquire
Charles L. Terry, III, Esquire
Donald M. Holler, Esquire